

COPY

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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x

4 SHAW FAMILY ARCHIVES, LTD.,  
5 EDITH MARCUS, and META STEVENS

6 Plaintiffs,

7 - against -

8 CMG WORLDWIDE, Inc., an Indiana  
9 corporation, and MARILYN MONROE,  
liability company,

10 Defendants.

11 -----x

12 Ellen Grauer Court Reporters  
13 126 East 56th Street  
14 New York, New York

15  
16 December 26, 2007  
17 12:01 p.m.

18  
19 30(b)(6) deposition of MARK  
20 ROESLER, before Marlene Lee, CSR, CRR, a Notary  
21 Public of the State of New York.

22  
23 ELLEN GRAUER COURT REPORTING CO. LLC  
24 126 East 56th Street, Fifth Floor  
New York, New York  
212-750-6434  
25 Ref: 86257

1 ROESLER

2 said I said?

3 Q. Sure. Earlier you testified that  
4 CMG is in the business of, among other things,  
5 managing the images of Marilyn Monroe. I'm  
6 asking what you meant by that.

7 MR. MINCH: Objection.

8 MS. COLBATH: Objection.

9 A. I think I said managing the various  
10 rights of Marilyn Monroe.

11 Q. Okay. What did you mean by that?

12 MR. MINCH: Objection.

13 A. Our job as the licensing  
14 representative of Marilyn Monroe LLC is to  
15 license, manage, protect the intellectual  
16 property rights, which include the -- whatever  
17 right of publicity rights exist, the trademark  
18 rights, and the various copyrights of Marilyn  
19 Monroe LLC.

20 Q. And what I'm trying to get at is  
21 that, in addition -- in particular, when you  
22 say manage and protect and license the  
23 intellectual property rights of Marilyn Monroe,  
24 in particular, on a daily basis, what does that  
25 consist of?

1 ROESLER

2 A. I'd say it's joint. To a certain  
3 extent, it's joint.

4 Q. We'll come back to this question,  
5 but I just want to get it on the record.  
6 What's the basis for CMG's belief that it has  
7 any rights to license images of Marilyn Monroe  
8 to third parties?

9 MR. MINCH: Objection.

10 Q. And to charge a fee for it?

11 MR. MINCH: Objection.

12 A. The basis would be our  
13 representation agreement with Marilyn Monroe  
14 LLC. The fact that -- the fact that we've  
15 assisted in securing trademark protection for  
16 the estate. The fact that -- the fact that the  
17 estate has various common-law ownership rights,  
18 in our opinion, to Marilyn Monroe. And the  
19 fact that the Marilyn Monroe LLC owns certain  
20 copyrights in photographs and artwork.

21 So in summary, there is a portfolio  
22 of assets that the Marilyn Monroe LLC owns that  
23 we manage, license, market, protect.

24 Q. I notice you didn't mention the  
25 right of publicity in that recitation.

ROESLER

Q. Sitting here today, you can't tell me whether you believe LLC has a right of publicity in Marilyn Monroe or not?

MR. MINCH: Objection.

MS. COLBATH: Objection.

A. I believe that Marilyn Monroe LLC has intellectual property rights to various aspects of Marilyn Monroe.

Q. What are those intellectual property rights that you're referring to?

MR. MINCH: Objection.

A. As I said earlier, Marilyn Monroe LLC has certain copyrights that they own. They have various trademark rights. They have what we believe to be common-law rights. They have Lanham Act rights. And we believe they have an enforceable right of publicity in certain jurisdictions.

Q. What jurisdiction do you believe MMLLC has an enforceable right of publicity?

MR. MINCH: Objection.

A. At least Indiana.

Q. Any other states?

A. California.

1 ROESLER

2 collection, don't they?

3 MS. COLBATH: Objection.

4 A. Yes.

5 Q. So they license actual images at  
6 times; right?

7 A. I'm confused what you mean by  
8 "license images." You mean sell images.  
9 Specifically sell limited edition prints?

10 Q. Let me rephrase the question. With  
11 respect to Marilyn Monroe, what MMLLC does is  
12 license -- they have in the past and to date --  
13 license a right of publicity in Marilyn Monroe;  
14 correct?

15 MS. COLBATH: Objection.

16 A. That is not correct. That's  
17 partially -- partially correct, but standing on  
18 its own would be incorrect.

19 Q. Why don't you clarify it for me.

20 A. Marilyn Monroe LLC has a portfolio  
21 of intellectual property rights. Those include  
22 certain copyrights. They have both film  
23 footage and images that they own the copyrights  
24 to. They have artwork, illustrations that they  
25 own the copyrights to. They have various

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2 trademarks around the world for Marilyn Monroe.  
3 They have the right of publicity when and where  
4 it exists. They have common-law trademark  
5 rights. Common-law right of publicity rights.  
6 They have Lanham Act rights. So there's this  
7 portfolio of intellectual property rights that  
8 they -- that the entity owns.

9 Q. And licenses.

10 A. And licenses. Correct.

11 Q. Has MMLLC, through CMG, ever  
12 licensed any of the images of Marilyn Monroe  
13 that appear in the Rizzoli book?

14 MR. MINCH: Objection.

15 A. I don't --

16 MS. COLBATH: Objection.

17 A. I don't know. I don't know. I  
18 don't know.

19 Q. Did you undertake to find the  
20 answer to that question prior to the submission  
21 of the Third Amended Complaint in this action?

22 MR. MINCH: Objection.

23 A. I mean, there's -- I guess you'd  
24 have to hone in on your question just a little  
25 more, because there's two aspects to that.

A C K N O W L E D G M E N T

STATE OF NEW YORK )

:ss

COUNTY OF NEW YORK )

I, MARK ROESLER, hereby certify that I have read the transcript of my testimony taken under oath in my deposition of December 26, 2007; that the transcript is a true, complete and correct record of my testimony, and that the answers on the record as given by me are true and correct.

-----  
MARK ROESLER

Signed and subscribed to before me  
this ---- day of -----, 2007.

-----  
Notary Public, State of New York

C E R T I F I C A T E

STATE OF NEW YORK )

: ss.

COUNTY OF NEW YORK )

I, MARLENE LEE, a Certified Shorthand Reporter, Certified Realtime Reporter and Notary Public within and for the State of New York, do hereby certify:

That MARK ROESLER, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 27 day of December, 2007.

Marlene Lee

MARLENE LEE, C.S.R, C.R.R.



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## \*\*\*ERRATA\*\*\*

ELLEN GRAUER COURT REPORTING CO. LLC  
 126 East 56th Street, Fifth Floor  
 New York, New York 10022  
 212-750-6434

NAME OF CASE: SHAW FAMILY ARCHIVES VS. CMG  
 DATE OF DEPOSITION: December 26, 2007  
 NAME OF WITNESS: MARK ROESLER

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Subscribed and sworn before me

this \_\_\_\_\_ day of \_\_\_\_\_, 2007.